

Montana Water Court
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FILED
08/09/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
42A-0025-I-2023
Lambert, Kathryn
12.00

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION ROSEBUD CREEK - BASIN 42A
INTERLOCUTORY DECREE

CLAIMANTS: Carole D. Sweedland; Kenneth R. Sweedland

OBJECTOR: Northern Cheyenne Tribe

NOTICE OF INTENT TO APPEAR: Carole D. Sweedland

CASE 42A-0025-I-2023
42A 30143644

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The Northern Cheyenne Tribe objected to Carole D. Sweedland and Kenneth R. Sweedland claim 42A 30143644. This claim appeared in the Interlocutory Decree with the following remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 42A DECREE ISSUED 5/23/2013.

THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OR ALL OF THE PLACE OF USE APPEARS TO BE ON FEDERAL LAND.

On July 10, 2023 the parties filed a Stipulation. The Stipulation requests changing the priority date. As priority date is not at issue, this is deemed the claimants' motion to amend pursuant to section 85-2-233(6), MCA. The Stipulation is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

The Montana Water Court has jurisdiction to review a motion to amend pursuant to section 85-2-233(6), MCA.

Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423 (1985). The requested amendment "merely makes more specific that which has already been alleged." *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

Notice must be published by newspaper if the requested amendments "may adversely affect other water rights." Section 85-2-233(6)(a)(i), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants amending their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The change requested in the motion to amend arises out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, is based on the same operative facts specified in the Statement of Claim, and merely makes more specific that which was already claimed on the original Statement of Claim.

2. The Interlocutory Decree states that the priority date is December 31, 1885. The

priority date should be July 23, 1886.

3. The remark concerning ownership provides notice of this possible issue. No objection was filed by the federal government to pursue this possible issue. The remark should be removed as having served its notice purpose.

4. The other remark provides notice that this claim was not in the Interlocutory Decree. This remark should be removed as having served its notice purpose.

CONCLUSIONS OF LAW

1. As the requested amendment is a reduction in seniority of the priority date, this amendment does not adversely affect other water rights. Notice by publication of this amendment is not required. Section 85-2-233(6), MCA.

2. The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

3. The settlement, including the motion to amend, is sufficient to contradict and overcome the prima facie claim as it appeared in the Interlocutory Decree.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court grant the motion to amend and make the changes specified in the Findings of Fact to correct the Interlocutory Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

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c/o Carole D. Sweedland
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
ROSEBUD CREEK
BASIN 42A

Water Right Number: 42A 30143644 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: CAROLE D SWEEDLAND
PO BOX 1111
FORSYTH, MT 59327 1111

KENNETH R SWEEDLAND
PO BOX 1111
FORSYTH, MT 59327 1111

***Priority Date:** JULY 23, 1886

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 20.00 GPM

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

***Source Name:** SPRING, UNNAMED TRIBUTARY OF WEST ROSEBUD CREEK
Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENE	30	5N	42E	ROSEBUD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SENE	30	5N	42E	ROSEBUD